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NO. 87-369

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1987

STEVEN R. O'DONNELL, Petitioner

v.

LOCAL 165, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO

Respondent

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Respondent, LOCAL 165, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, opposes the Petition for a Writ of Certiorari because the Decision below is fact-specific, and presents no special or important reason for Supreme Court review, and because the Decision below does not conflict with Decisions of this Court, or with other Courts of Appeals.

ARGUMENT

REASONS WHY THE WRIT SHOULD BE DENIED

A.

THE APPELLATE COURT DECISION DID NOT INVOLVE THE RESOLUTION OF ANY CONSTITUTIONAL QUESTIONS

Defendant claims that the Illinois Appellate Court Decision, in effect, resulted in a deprivation of the defendant's Constitutional right under the Due Process Clause to cross-examine plaintiff's only witness. This argument is clearly in error since the Appellate Court Decision turned on a simple question of fact, i.e., whether defendant introduced sufficient evidence during his Case-in-Chief, to establish that he had provided legally effective notice of his resignation from Union membership to Local 165. The Appellate Court Decision did not decide or raise any Constitutional questions.

In explanation, it must be emphasized that prior to trial, defendant stipulated to

all the facts in Local 165's Complaint and elected to proceed to trial on the sole issue of whether defendant had effectively resigned from Local 165 on the first day of the strike. (Appendix to Defendant's Petition, p. 12a) Thus, defendant had the burden of proceeding first at trial and proving all of the facts necessary to establish his affirmative defense of resignation.

In order to prevail on his affirmative defense of resignation, the Appellate Court found that defendant was required at trial to establish proper notice to Local 165. (Appellant's Appendix, p. 6a-9a) The Appellate Court found that there was insufficient evidence to establish proper notice of resignation to Local 165 and it is evident from the record that defendant failed to meet this burden in his Case-in-Chief. (Appellant's Appendix, p. 12a-15a) The only probative evidence defendant introduced at trial concerning his notice of resignation

was that he gave his Union Card to another member (Ryan) outside of the work place and told that member that "I'm out of the Union". Mr. Ryan was not an officer of Local 165 and held no official position with Local 165. (Appendix to Defendant's Petition, p. 13a) As the Appellate Court found, this evidence is clearly insufficient to establish effective notice to Local 165. See, Bauer v. Sape, 133 Ill.App.3d 760, 272 N.E.2d 703, 705 (3rd Dist., 1971); c.f., Briggs v. International Alliance of Theatrical Employees, 479 F.Supp. 1232, 1292 (D.C. Conn. 1979) aff'd. 628 F.2d 1344 (2nd Cir. 1980); Bradley v. Local 119 I.U.E., 236 F.Supp. 724, 728-729 (F.D.Pa., 1964).

Now defendant claims that he was deprived of due process of law because the Appellate Court did not remand this matter to the Trial Court for the apparent purpose of allowing defendant to attempt to prove his Case-in-Chief during the cross-examination of Local

165's witness. Obviously, the time for defendant to prove his affirmative defense of resignation was during his Case-in-Chief, and not during the cross-examination of Local 165's witness and after defendant has rested. For that reason, there is no merit to plaintiff's claim that he was deprived of due process of law as a result of the Appellate Court's Decision, which was a factual determination of a lack of evidence in the record to meet Appellant's burden of proof.

B.

THE APPELLATE COURT'S DECISION DOES NOT RESTRICT A UNION MEMBER'S RIGHT TO RESIGN FROM UNION MEMBERSHIP

Defendant asserts that the Appellate Court's Decision impermissibly restricts a Union member's right to resign from the Union. A cursory examination of the Appellate Court's Decision, however, does not support defendant's argument.

The scope of the Appellate Court's Decision is really very limited. The Appel-

late Court merely held that the tendering of a Union card accompanied by the statement, "I'm out of the Union" to another member outside the work place was not sufficient notice to Local 165. (Appellant's Appendix 5a-9a) Obviously, this holding does not limit a member's right to resign. It only requires a member to take more formal action than the defendant did here to communicate a resignation from Union membership. See, Bauer v. Sape, supra. c.f. Briggs v. Spaulding, 141 U.S. 132, 154 (1891); Basilicato v. International Alliance, 479 F.Supp., 1232 (1979); Bradley v. Local 119, I.U.E., 236 F.Supp. 724 (1964); American Law Reports, Annotated, 20 ALR 267.

Defendant suggests that the Appellate Court Decision is in conflict with this Court's Decision in Pattern Maker's League v. NLRB, 473 U.S. 95, 87 L.Ed.2d 68, 105 S.Ct. 3064 (1985). This is not true. Pattern Makers v. NLRB involved the construction of

a written provision in the Union Constitution which prohibited a member from resigning during a strike. There is no such Constitutional provision involved in this appeal and Local 165 has never argued that defendant was not free to resign from Union membership at any time.

In the Appellate Court, Local 165 only argued that a notice of resignation should either be made orally to an officer of Local 165 or made in writing and mailed or delivered to the business office of Local 165.[1] This position does not impermissibly restrict a member's right to resign. On the

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[1] It should be noted that, although the Local Union has no written procedure for membership resignation, the International Union's Constitution provides, in Article XVII, titled Rules for Local Union, under subheading Parliamentary Rules, as follows:

"10. All resolutions and resignations must be submitted in writing."

contrary, it only required a Union member to take some basic minimum steps to communicate his resignation to the Union. To impose this minimum duty on a Union member who wishes to resign is clearly reasonable and imposes no hardship on the Union member. As the Arbitrator noted in In re: Arbitration American Car & Foundry, 11 LRRM 2582 (1942):

> "Otherwise any disgruntled remark critical of the union and brought by hearsay to the offices of the union could by implication be interpreted as a resignation. To distinguish, then, between emotional, fleeting remarks that in reality express only temporary dissatisfaction and the determined, conclusive action that is involved in resignation, the resigning member himself may reasonably be expected to carry his statement of withdrawal to a responsible officer of the organization or to the membership assembled in formal meeting. 11 LRRM at 2583." (Emphasis added).

The Appellate Court here did no more than find that Local 165 was entitled to better notice than that provided by defendant in this case. That finding does not impermissibly restrict a member's right to resign or

conflict in any way with the Supreme Court's Decision in Pattern Makers' league v. NLRB, supra.

CONCLUSION

WHEREFORE, for the above and foregoing reasons, Plaintiff-Respondent, Local 165 respectfully requests this Court deny Appellant-Defendant's Petition for Writ of Certiorari.

Respectfully submitted,

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